

**EXHIBIT “P”**

**FILED**

## SUPERIOR COURT OF CALIFORNIA

NOV 29 2006

## COUNTY OF MONTEREY

LISA M. GALDOS  
CLERK OF THE SUPERIOR COURT  
*[Signature]* DEPUTY

In re ) Case No.: HC 4990 K. Hanson  
 )  
 Fred L. Baker (C-22918) ) ORDER  
 )  
 On Habeas Corpus. )

Petitioner brought the instant petition for writ of habeas corpus in which he averred that the Board of Prison Terms violated his constitutional right to due process by rescinding its September 24, 2004 parole suitability finding. As explained in the original Order to Show Cause issued by this Court, the sole reason for the Board's rescission was that a portion of the parole suitability hearing was not transcribed. Only a partial transcript could be obtained either because the tape recorder malfunctioned or because the Board only provided one of two hearing tapes for transcription. Petitioner has been incarcerated since November 6, 1980 following his conviction of kidnap for robbery with use of a firearm (Pen. Code secs. 209, 12022.5). He has served twelve years beyond his minimum eligible parole date of July 31, 1994.

The Court issued an Order to Show Cause, directing Respondent to establish why any rescheduled hearing should not be before the same Board members with instructions to issue a Decision recommending parole, and to address the apparent inequity created by Respondent's interpretation of the law. Respondent defended the Board's actions as proper, and declined to address the relevant equities of the matter. Petitioner then filed his Traverse/Response, a motion to amend the Traverse/Response, and a Request for Judicial Notice. Respondent filed an opposition and objection, and Petitioner filed a subsequent response. The Court granted Petitioner's request for judicial notice of blank BPT Forms 1000(a)-(b) [parole consideration

worksheets utilized by the Board in considering an inmate's suitability for parole] and BPT Form 1138 [Review of Proposed Decision]. As to the latter documents, the Court took judicial notice of the Board's official act in utilizing Form 1138 in its determination of Declarant's parole suitability, but not the veracity of the facts alleged therein. The Court did not consider Petitioner's jurisdictional claims (Pen. Code sec. 3041(b); 15 CCR secs. 2041, 2042, 2451). *Board of Prison Terms v. Superior Court* (2005) 130 Cal.App.4<sup>th</sup> 1212, 1238-39.

Upon review and consideration of the pleadings, the Court determined that the habeas petition contained pleading defects which required correction in order to ensure that Petitioner was afforded a full and fair hearing and a determination of the issues presented. The Court gave notice of the defects and granted Petitioner leave to amend or supplement the petition. Specifically, Petitioner was invited to (1) address whether the Board lost jurisdiction to preside over the December 2004 parole suitability re-hearing; (2) attach the September 2004 recommendation granting parole; (3) attach the forms and documents generated and utilized by the Board in connection with the September 2004 hearing; and (4) provide a further Declaration from inmate Fikes concerning the Board's actions in relying on hearing documents to produce a hearing transcript in lieu of conducting a *de novo* hearing.

The Court has read and considered Petitioner's amended/supplemental petition and attachments. It appears that Petitioner has alleged sufficient facts and circumstances therein to state a *prima facie* case for relief. *People v. Duvall* (1995) 9 Cal.4<sup>th</sup> 464. Accordingly, Respondent is Ordered to Show Cause why Petitioner should not be afforded the relief sought in his amended/supplemental petition. Respondent is further Ordered to ascertain from case records staff which forms it made available to the commissioners for use at Petitioner's September 2004 parole suitability hearing,<sup>1</sup> and to provide the Court with accurate copies of

<sup>1</sup> By correspondence dated June 28, 2006, Respondent advised counsel for Petitioner that "case records staff simply makes [BPT 1000(a) and (b)] forms available to the commissioners for use at the hearing, if necessary." Respondent further claimed that Petitioner's production request was "ambiguous" as to the "forms and documents

1 such forms and documents. The Court notes that in the "Parole Consideration Proposed  
2 Decision (BPT sec. 2041)" worksheet completed by the September 2004 BPT panel, Petitioner  
3 was specifically advised: "If the proposed decision . . . granting parole is disapproved, you will  
4 receive a copy of the proposed decision and the reasons for disapproval." Apparently, the copy  
5 for the proposed decision and stated reasons of the grounds for disapproval are not in  
6 Petitioner's central file. Respondent is requested to provide the Court with a copy of the  
7 proposed decision and stated reasons for the disapproval of the September 2004 suitability  
8 finding.

9 Respondent shall show cause by Return filed in this Court within thirty (30) days after  
10 the date of filing this Order. Petitioner may file his Traverse within thirty (30) days after  
11 service and filing of the Return. Upon receipt of the Return and Traverse, the Court shall  
12 determine whether to address the matter on the pleadings or set an evidentiary hearing.

13 IT IS SO ORDERED.

14 Dated: **NOV 20 2006**

**MARLA O. ANDERSON**

Hon. Marla O. Anderson  
Judge of the Superior Court

25 generated and utilized by the Board in connection with Petitioner's hearing." It is disingenuous to suggest that the  
Board is unable to identify which of its own documents it generates and utilizes in the performance of its duties in  
conducting parole suitability hearings.

CERTIFICATE OF MAILING

C.C.P. SEC. 1013a

I do hereby certify that I am not a party to the within stated cause and that on

**NOV 20 2006**

I deposited true and correct copies of the following document:

ORDER in sealed envelopes with postage thereon fully prepaid, in the mail at Salinas, California, directed to each of the following named persons at their respective addresses as hereinafter set forth:

Michael Herro  
Law Office of Michael Herro  
134 Central Avenue  
Salinas, CA 93901

Office of the Attorney General  
455 Golden Gate Ave., Suite 11000  
San Francisco, CA 94102  
Attn: Correctional Law Section

Pam Ham, DDA  
240 Church St., Rm. 101  
Salinas, CA 93901

*Via interoffice mail*

**NOV 20 2006**

Dated: \_\_\_\_\_

LISA M. GALDOS,  
Clerk of the Court

By: 

Deputy

K. Hanson

**EXHIBIT “Q”**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MONTEREY  
SALINAS DIVISION

In re

**FRED L. BAKER,**

Petitioner,

**On Habeas Corpus.**

No. HC 4990

**[PROPOSED] ORDER**

Dept:

Judge:

The Honorable Marla O.  
Anderson

The court considered respondent's request for an extension of time to file a supplemental return, and good cause appearing,

IT IS HEREBY ORDERED that respondent's request for an extension of time to file a supplemental return is **GRANTED**; respondent shall file a supplemental return by **January 8, 2007**. If petitioner wishes to file a traverse, he shall file his traverse within thirty days after service and filing of the return.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Marla O. Anderson  
Judge of the Superior Court

1 BILL LOCKYER  
Attorney General of the State of California  
2 MARY JO GRAVES  
Chief Assistant Attorney General  
3 JULIE L. GARLAND  
Senior Assistant Attorney General  
4 ANYA M. BINSACCA  
Supervising Deputy Attorney General  
5 DENISE A. YATES, State Bar No. 191073  
Deputy Attorney General  
6 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
7 Telephone: (415) 703-5531  
Fax: (415) 703-5843  
8 Attorneys for Respondent Ben Curry, Acting Warden  
at the Correctional Training Facility  
9 SF2005200086

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF MONTEREY

12 SALINAS DIVISION

13  
14 In re

15 **FRED L. BAKER,**

16 Petitioner,

17 **On Habeas Corpus.**

No. HC 4990

**RESPONDENT'S REQUEST FOR  
AN EXTENSION OF TIME TO FILE  
A SUPPLEMENTAL RETURN;  
COUNSEL'S SUPPORTING  
DECLARATION**

18  
19 Judge: The Honorable Marla O.  
Anderson

20 **REQUEST**

21 Respondent Ben Curry, Acting Warden at the Correctional Training Facility, requests that  
22 the court, for the reasons set forth in the attached declaration of counsel, grant an extension of  
23 time to, and including, **January 8, 2007**, to file a supplemental return.

24 **DECLARATION**

25 I, DENISE A. YATES, declare as follows:

26 1. I am an attorney admitted to practice before the courts of the State of California  
27 and before this Court. I am employed by the California Attorney General's Office as a Deputy  
28 Attorney General in the Correctional Writs and Appeals Section, and I am assigned to represent



1 respondent in this case.


2           2. Pursuant to the court's November 20, 2006 order to show cause, respondent's  
3 supplemental return is due December 20, 2006. I need additional time to file a supplemental  
4 response in this case because although I have prepared the supplemental return, I have been  
5 unable to secure a declarant for the supporting declaration. Because I am uncertain when I will  
6 be able to secure a declarant during this holiday season, I respectfully request additional time  
7 until January 8, 2007, file a supplemental return.

8           3. This request for an extension of time is not made for any purpose of harassment,  
9 undue delay, or for any improper reason. Without this requested extension of time, I would not  
10 be able to properly and thoroughly address the court's concerns.

11           4. On December 20, 2006, I left a message for Baker's counsel, Michael Herro, that I  
12 would be requesting this extension of time. Petitioner Baker is serving a life sentence with the  
13 possibility of parole and should not be prejudiced by this request, especially since I am informed  
14 that he waived his parole consideration hearing yesterday.

15           5. Respondent has not previously requested an extension of time to file a  
16 supplemental return in response to the court's November 20, 2006 order to show cause.

17           I declare under penalty of perjury that the foregoing is true and correct and that this  
18 declaration was executed on December 20, 2006, at San Francisco, California.

19  
20   
21 DENISE A. YATES  
22 Deputy Attorney General  
23  
24  
25  
26  
27  
28

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **In re FRED L. BAKER**

No.: **HC04990**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **December 20, 2006**, I served the attached

**RESPONDENT'S REQUEST FOR AN EXTENSION OF TIME TO FILE A  
SUPPLEMENTAL RETURN; COUNSEL SUPPORTING DECLARATION**

**[PROPOSED] ORDER**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Michael Herro**  
**Attorney at Law**  
**Herro Law Offices**  
**134 Central Avenue**  
**Salinas, CA 93901**  
Attorney for Fred L. Baker C-22918

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **December 20, 2006**, at San Francisco, California.

\_\_\_\_\_  
J. Tucay  
Declarant

\_\_\_\_\_  
*J. Tucay*  
Signature

**EXHIBIT “R”**

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF MONTEREY**

Date: 12-29-2006

Hon. Judge Marla Anderson Habeas Judge

Kristie Hanson Deputy Clerk

People of the State of California,  vs.  Fred L. Baker (C-22818)	Case No. HC4990  Minute Order: Order to Extend Time To File Supplemental Return
--	--

It has come to the attention of the Court that due to clerical error, the file was misplaced until 12-29-2006.

Therefore, good cause showing, the respondent shall have an additional 30 days from the date of service of this order to show cause by Supplemental Return filed in this court, thereafter, Petitioner may file his Traverse within 30 days from the service and filing of the return.

MARLA ANDERSON

\_\_\_\_\_  
Judge of the Superior Court

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**CERTIFICATE OF MAILING**

**C.C.P. SEC. 1013a**

I do hereby certify that I am not a party to the within stated cause and that on

1/5/07

I deposited true and correct copies of the following document:

ORDER in sealed envelopes with postage thereon fully prepaid, in the mail at Salinas,  
California, directed to each of the following named persons at their respective addresses as  
hereinafter set forth:

Michael Herro  
Law Office of Michael Herro  
134 Central Avenue  
Salinas, CA 93901

Dated: 1/5/07

LISA M. GALDOS,  
Clerk of the Court

By: 

Deputy

K. Hanson

**EXHIBIT “S”**

Petitioner's COPY

Fred L. Baker  
Correctional Training Facility  
Central-Facility  
C-22918, B-321L  
P.O. Box 689  
Soledad, CA 93960-0689

**FILED**

JAN 08 2007

LISA M. GALDOS  
CLERK OF THE SUPERIOR COURT  
~~S. GARSIDE~~ DEPUTY

Petitioner in Pro Per

SUPERIOR COURT OF MONTEREY COUNTY  
IN AND FOR THE STATE OF CALIFORNIA

In re

FRED L. BAKER,

On Habeas Corpus.

HC 04990

MOTION TO GRANT RELIEF  
REQUESTED IN PETITION  
OF WRIT OF HABEAS CORPUS

TO THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF  
MONTEREY, HONORABLE MARLA O. ANDERSON:

Petitioner, Fred Lee Baker, in Pro Per hereby respectfully request that this Court grant the relief requested in the above entitled matter. This matter was originally filed on January 27, 2005. Respondents submitted their Return on November 23, 2005 and Petitioner submitted an Amended Traverse/Response on January 6, 2006. On or about June 6, 2006, the Court issued an Order, inviting Petitioner leave to file a supplemental pleading to his original petition to address some very specific issues which in the Court's view were not expressly or implicitly raised in the original petition and pleadings filed in this matter. Specifically, Petitioner was invited to address

1 whether the Board lost jurisdiction to preside over the December  
2 2004 parole suitability hearing.

3 On July 10, 2006 Petitioner filed his amended/supplemental  
4 petition and attachments pursuant to the above Order. Upon  
5 review and consideration of the pleadings in a subsequent Order  
6 dated November 20, 2006, the Court issued findings that  
7 Petitioner had "alleged sufficient facts and circumstances  
8 therein to state a prima facie case for relief. Accordingly,  
9 the Court ordered Respondent to Show Cause why Petitioner should  
10 not be afforded the relief sought in his amended/supplemental  
11 petition. In doing so, the Court stated that Respondent shall  
12 show cause by Return filed in this Court within (30) days after  
13 the date of the Order. Petitioner was invited to file a traverse  
14 within (30) days thereafter.

15 On December 22, 2006 Petitioner received a letter from  
16 Court appointed counsel Michael Herro, dated December 20, 2006  
17 informing him that Mr. Herro would no longer be able to represent  
18 Petitioner. Mr. Herro further noted "[a]s of today's date I  
19 do not believe the AG has filed their Return, which by the terms  
20 of the order would be due on Dec. 20, 2006." (A copy of the  
21 December 2006 letter is attached hereto as Appendix 1.)

22 This Court has the authority to grant the relief requested  
23 pursuant to Penal Code §§ 1474, 1480, Cal. Rules of Ct., §  
24 4.551(d)-(f), and the memorandum of points and authorities  
25 submitted herein.

26 I

27 PETITIONER'S BURDEN PURSUANT TO PENAL CODE § 1474

28 To satisfy the initial burden of pleading adequate grounds



1 for relief, an application for habeas corpus must be made by  
2 petition, and "[i]f the imprisonment is alleged to be illegal,  
3 the petition must also state in what the alleged illegality  
4 consists." (id., § 1474, subd. (2).)

5 In summarizing the rules governing habeas corpus relief,  
6 the California Supreme Court ruled in In re Duvall, (1995) 9  
7 Cal.4th 464, 474, that "[t]he petition should both (i) state  
8 with particularity the facts on which relief is sought  
9 [citations], [and] (ii) include copies of reasonably available  
10 documentary evidence supporting the claim, including pertinent  
11 portions of trial transcripts and affidavits or declarations.  
12 [Citations]."

13 Moreover, when a reviewing court has determined that the  
14 petition states a prima facie case on a claim that is not  
15 procedurally barred, and issues an order to show cause directing  
16 the respondent to serve and file a written return, the  
17 "petitioner may either file a traverse or the parties may  
18 stipulate that the original habeas corpus petition be treated  
19 as a traverse. [Citations]." (Duvall, supra, 9 Cal.4th at  
20 p. 477; Cal. Rules of Ct., Rule 4.551(e).)

## 21 II

### 22 RESPONDENT'S RESPONSIBILITY PURSUANT TO PENAL CODE § 1480

23 To fulfill the duty conferred upon Respondent by statute,  
24 case law provides "the custodian of the confined person shall  
25 file responsive pleading, called a return, justifying the  
26 confinement. [Citation]." (Duvall, supra, 9 Cal.4th at pp.  
27 476-477; Board of Prison Terms v. Superior Court, (2005) 130  
28 Cal.App.4th 1212, 1237.)

1 The principle reiterated in this Court's precedent -- that  
 2 where a return containing only general denials is deficient --  
 3 is also firmly embedded in California law: "we have required  
 4 the return to 'allege facts tending to establish the legality  
 5 of petitioner's detention.'" (In re Sixto, (1989) 48 Cal.3d 1247,  
 6 1252; see also In re Romero, (1994) 8 Cal.4th 728, 738 [indicat-  
 7 ing "[t]he return ... must allege facts establishing the legality  
 8 of petitioner's detention."]; In re Lawler, (1979) 23 Cal.3d  
 9 190, 194 [return must allege facts]; In re Saunders, (1970)  
 10 2 Cal.3d 1033, 1047 (same).)

11 In addition to the California Supreme Court's finding that  
 12 Respondent's return "must either admit the factual allegations  
 13 set forth in the habeas corpus petition, or allege additional  
 14 facts that contradict those allegations" (Duvall, supra, 9 Cal.4th  
 15 484), California law dictates that "[a]ny material allegation  
 16 of the petition not controverted by the return is deemed admitted  
 17 for the purpose of the proceeding." (Cal. Rules of Ct.,  
 18 4.551(d).)

### 19 III

#### 20 MEMORANDUM OF POINTS AND AUTHORITIES 21 IN SUPPORT OF RELIEF REQUESTED

#### 22 A. Procedure Governing Habeas Corpus

23 In this State, "[t]he rules governing postconviction habeas  
 24 corpus relief recognize the importance of the 'Great Writ,'  
 25 an importance reflected in its constitutional status ... "  
 26 (In re Clark, (1993) 5 Cal.4th 750, 763-764.) The "state  
 27 constitution guarantees that a person improperly deprived of  
 28

1 his or her liberty has the right to petition for a writ of  
2 habeas corpus." (Duvall, supra, 9 Cal.4th at 474.) Thus, the  
3 petition serves primarily to launch the judicial inquiry into  
4 the legality of the restraints on the petitioner's personal  
5 liberty.

6 In explaining the role of the court in habeas proceedings  
7 the California Supreme Court noted:

8 "[w]hen presented with a petition for writ of  
9 habeas corpus, a court must first determine  
10 whether the petition states a prima facie  
11 case for relief - that is, whether it states  
12 facts that, if true, entitle the petitioner  
13 to relief - and also whether the stated  
14 claims are for any reason procedurally barred.  
15 [Citation]."

16 (Romero, supra, 8 Cal.4th at 737.) If the court's preliminary  
17 assessment indicates that the "petition is sufficient on its  
18 face ..., the court is obligated to issue a writ of habeas  
19 corpus." (Ibid.; Penal Code § 1476.) Moreover, California Court's  
20 have developed the practice of using the order to show cause  
21 as a substitute for the writ of habeas corpus requiring the  
22 "respondent custodian to serve and file a written return."  
23 (Romero, supra, 8 Cal.4th at 738, quoting In re Hochberg, (1970)  
24 2 Cal.3d 870, 874.)

25 Because the return "is an essential part of the scheme" by which relief  
26 is granted in a habeas corpus proceeding, "the respondent must  
27 respond to the order to show cause by filing a return that  
28 addresses the prima facie claims, to which the petitioner may  
reply in a traverse." (Romero, supra, 8 Cal.4th 739; Board  
of Prison Terms v. Superior Court, supra, 130 Cal.App.4th at  
1240.) "When [Respondent's] return fails to dispute the

1 factual allegations contained in the petition and traverse, it  
2 essentially admits those allegations." (Bland v. California  
3 Dept. of Corrections, 20 F.3d 1469, 1471 (9th Cir. 1994) (quoting  
4 Sixto, supra, 48 Cal.3d at 1247).)

5 **B. Applicability to Petitioner's Case**

6 Here, as detailed in the original petition filed in propria  
7 persona on January 27, 2005, Petitioner challenged the Board's  
8 authority to rescind its September 24, 2004 finding of  
9 suitability for parole based solely on the fact that the Board  
10 lost the decision portion of the transcript from the hearing,  
11 there was no evidence to support rescission, and that his  
12 continued incarceration grossly exceeds the established  
13 guidelines. (Pet. at pp. 3(a)-3(d).)

14 After determining that Petitioner made a prima facie case  
15 for relief, this Court ordered Respondent to Show Cause why  
16 Petitioner should not be granted the relief sought in his  
17 petition.<sup>1/</sup> (Order, August 23, 2005.) However, rather than  
18 filing a return responsive to the petition, Respondent has  
19 instead chosen to defy the Court's directive and cites to Penal  
20 Code Sections 3041(b), 3041.1, and 3042(b)-(c) for the  
21 proposition that the Board's actions were proper and legally  
22 mandated. Respondent further complain that the Court improperly  
23 directed respondent to justify holding a rehearing rather than  
24 having the panel re-create its decision. (Resp. Return at pp. 6-8.)

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25  
26 1. On November 20, 2006, Respondent was directed to address the  
27 additional claims raised in the amended/supplemental petition filed on July  
28 10, 2006. To date, Petitioner has not been served a copy of Respondent's  
Return.

1 In a subsequent Order this Court rejected Respondent's  
2 contention, concluding that "[n]o mandate is set forth requiring  
3 a rehearing where, as here, the recording equipment malfunctions  
4 or staff simply neglects to produce all tapes for transcription,"  
5 and further noting that a "court is not constrained in its  
6 crafting of an appropriate remedy simply because an action has  
7 been inartfully pled." (Order, June 5, 2005.)

8 In the instant case, Respondent was afforded an opportunity  
9 to respond to the Order to Show Cause but has failed to do so,  
10 thus, with respect to the granting of habeas corpus, the  
11 California Supreme Court explained:

12 "we did not say that respondent must be given  
13 an opportunity, before a court grants habeas  
14 relief, to file some sort of opposition;  
15 rather, we said the respondent must be given  
16 an opportunity to file a return, which is a  
document filed only after issuance of an order  
to show cause or a writ of habeas corpus."

17 (Romero, supra, 8 Cal.4th at 744.) The Supreme Court then  
18 reaffirmed its position in Adoption of Alexander S., (1988)  
19 44 Cal.3d 857, stating that "a court may grant a habeas corpus  
20 petitioner final release from custody or other affirmative  
21 relief after issuance of an order to show cause or a writ of  
22 habeas corpus." (8 Cal.4th at 744.)

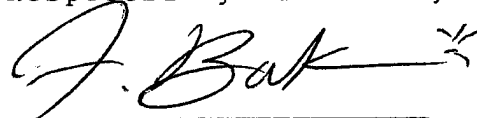
23 Accordingly, because Respondent's return did not dispute  
24 the material facts alleged in the petition following the  
25 issuance of the Order to Show Cause, this Court must find that  
26 Respondent is deemed to admitted the facts that form the basis  
27 of Petitioner's claims, and grant the petition for writ of  
28 habeas corpus. (Sixto, supra, 48 Cal.3d at 1252; In re

1 Rosenkrantz, (2002) 29 Cal.4th 616, 658; Cal. Rules of Ct.,  
2 Rule 4.551(d).)

3 THEREFORE, the Petition for Writ of Habeas Corpus should  
4 be granted, and the Respondents be ordered to release Petitioner  
5 forthwith.

6  
7 Dated: January 4, 2007.

Respectfully Submitted,

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10 Fred L. Baker  
11 Petitioner in Pro Per  
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SUPERIOR COURT OF MONTEREY COUNTY  
IN AND FOR THE STATE OF CALIFORNIA

In re

FRED L. BAKER,

On Habeas Corpus.

HC 04990

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am a resident of the State of California, County of Monterey. I am over the age 18 years and a party to the within action. My business/residence address is P.O. Box 689, Soledad, California, 93960-0689.

On January 4, 200<sup>7</sup>, I caused to be served the attached

MOTION TO GRANT RELIEF REQUESTED IN  
PETITION OF WRIT OF HABEAS CORPUS

DECLARATION OF FRED L. BAKER IN SUPPORT OF MOTION TO  
GRANT RELIEF REQUESTED IN  
PETITION OF WRIT OF HABEAS CORPUS

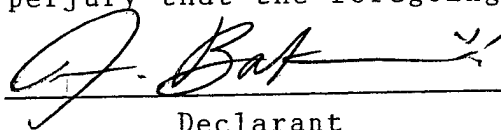
LETTER OF MICHAEL HERRO, DATED DECEMBER 20, 2006

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the internal mail collection system at the Correctional Training Facility at P.O. Box 689, Soledad, CA 93960-0689, addressed as follows:

Michael Herro  
Law Office of Michael Herro  
134 Central Avenue  
Salinas, CA 93901

Office of the Attorney General  
455 Golden Gate Ave., Suite 11000  
San Francisco, CA 94102  
Attn: Correctional Law Section

I declare under penalty of perjury that the foregoing is true and correct.



Declarant

Mr. Frederick L. Baker  
C-22918  
Correctional Training Facility-Soledad  
P.O. Box 689  
Soledad, Ca. 93960

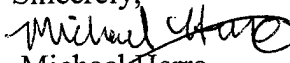
December 20, 2006

Mr. Baker-

I know it has been quite some time since we corresponded and I am truly sorry for not getting back to you sooner. I did talk to Ethel Martin not long ago and hope she got you the message from me. I will not attempt to provide an excuse as to how this matter has been handled either by myself or the court's, other than to tell you that I am sincerely sorry and that it was not my intention to prolong this matter, or let it "slip through the cracks". I am willing to do whatever is necessary (a declaration, etc.) should you seek remedy from a higher court.

I filed your request for ruling as requested, and then got a call from the research attorney explaining that an order had been issued, but that it was "lost" in the court building when it was shut down due to an industrial accident. I went repeatedly to the clerk's office over the next several weeks and asked if any order had been filed that they had a record of, but nothing ever showed up. On October 30, I moved from private practice into the Public Defender's Office, and Ms. Martin contacted me here at that office not long after. Following my conversation with her, I called the research attorney again, insisting that something be done on your case, as all of us involved with the courts and their administration had completely failed to properly handle your petition. She apologized profusely, told me that in fact they had just located the file and the "lost" order and that it would be sent out immediately. A short while after, I did receive the Order to Show Cause included with this letter. As of today's date I do not believe the AG has filed their Return, which by the terms of the order would be due on Dec. 20, 2006.

Due to my new position in the Public Defender's Office, I am no longer able to represent you in this matter. I have asked the Alternate Defender's Office, who originally assigned me your case to assign new counsel immediately to prepare the Traverse contemplated by the most recent order. If you feel that having a different attorney appointed will in any way not serve your best interest or prejudice your claim, I am willing to do whatever is necessary to continue representing you in this matter. Please write and let me know how you wish for me to proceed. Again, it is difficult to express how truly sorry I am about what has transpired in this matter, and hope that I can be of some service to you in the future.

Sincerely,  
  
Michael Herro



**EXHIBIT “T”**

**ORIGINAL**

1 BILL LOCKYER  
 Attorney General of the State of California  
 2 MARY JO GRAVES  
 Chief Assistant Attorney General  
 3 JULIE L. GARLAND  
 Senior Assistant Attorney General  
 4 ANYA M. BINSACCA  
 Supervising Deputy Attorney General  
 5 DENISE A. YATES, State Bar No. 191073  
 Deputy Attorney General  
 6 455 Golden Gate Avenue, Suite 11000  
 San Francisco, CA 94102-7004  
 7 Telephone: (415) 703-5531  
 Fax: (415) 703-5843  
 8 Attorneys for Respondent Ben Curry, Acting Warden  
 at the Correctional Training Facility  
 9 SF2005200086

FEB 07 2007

**FILED**

FEB 07 2007

LISA M. GALDOS  
 CLERK OF THE SUPERIOR COURT  
*[Signature]* DEPUTY

S. GARSIDE

## SUPERIOR COURT OF CALIFORNIA

## COUNTY OF MONTEREY

## SALINAS DIVISION

In re

**FRED L. BAKER,**

Petitioner,

**On Habeas Corpus.**

No. HC 4990

**RESPONDENT'S RETURN TO  
 THE AMENDED/SUPPLEMENTAL  
 PETITION**

Judge: The Honorable Marla O.  
 Anderson

INTRODUCTION

20 A review of the protracted litigation in this case is warranted. Petitioner Baker, a prisoner  
 21 now proceeding with counsel in this habeas case, originally challenged the Board of Prison  
 22 Terms' (Board, now Board of Parole Hearings) decision that his September 24, 2004 parole  
 23 consideration hearing must be reheard because the entire hearing could not be transcribed. (Petrn.  
 24 at pp. 3-3(a).) After the parties filed informal responses, the court ordered respondent to show  
 25 cause why a hearing should not be held by the same Board members, adopting the partial  
 26 transcript and recreating their decision recommending parole based on the transcript and their  
 27 independent recollection. (Order, filed August 23, 2005.)

28 Respondent informed the court that a rehearing was held, Baker declined to appear at the

1 hearing, and the Board denied Baker parole for one year. The court then questioned why a de  
2 novo hearing was necessary to correct the Board's failure to properly record the 2004 hearing.  
3 (Order, filed October 24, 2005.) In his return, respondent explained that because the transcript  
4 did not contain the statements by the victim, the petitioner, or his attorney, as well as the Board's  
5 decision, the hearing was not held in accordance with the law and must be redone. Further,  
6 Baker's due process rights were not violated because the parole grant was a preliminary decision  
7 subject to review by the Board and the Governor, and Baker did not have a due process liberty  
8 interest in a preliminary decision. Moreover, it would be inappropriate to sanction something as  
9 serious as paroling a life prisoner based on a decision the Board was forced to recreate from their  
10 memory. Finally, respondent argued that the court could not grant any relief based on the Board  
11 considering Baker's parole suitability de novo because Baker did not raise that issue in his  
12 petition.

13 Baker filed at traverse, to which respondent objected. First, respondent objected to  
14 Baker's request that the court take judicial notice of documents regarding another inmate's  
15 hearing (inmate Freddy Fikes) where the decision was recreated based on the decision work sheet  
16 that was fortuitously retained and reflected the Board's reasoning. Second, respondent objected  
17 to Baker's newly-asserted claim that the Board had lost jurisdiction to preside over Baker's  
18 "parole application" because Baker did not raise it in his petition.

19 The court took judicial notice of the BPT forms 1000(a) and 1000(b), and regarding the  
20 decision worksheet used in inmate Fikes's hearing, the court took judicial notice of the Board's  
21 official act in utilizing the form, but not the truth of the facts reflected on the form. Finally, the  
22 court invited Baker to file an amended or supplemental petition to address facts and theories that  
23 he did not raise in his original petition. The court invited Baker to attach to his amended or  
24 supplemental petition: (1) the Board's written statement recommending that parole be granted;  
25 (2) the forms and documents generated and used by the Board in connection with his hearing;  
26 and (3) a declaration properly authenticating and identifying the documents inmate Fikes  
27 references.

28 Baker filed an amended/supplemental petition in which he requested an additional ground

1 be added to his original petition. In his amended/supplemental petition, Baker summarily alleges  
 2 that the Board's actions exceeded the time limits set forth in California Code of Regulations, title  
 3 15, sections 2041, 2042, 2044, and 2451, and Penal Code section 3041(b). Baker then  
 4 incorporates by reference section two in his traverse addressing this ground. Baker produced the  
 5 documents he obtained from his central file, and the BPT 1000(b) form was not one of them.

6 The court has now ordered respondent to show cause why Baker should not be afforded  
 7 the relief sought in his amended petition. Further, the court ordered respondent to ascertain from  
 8 case records staff which forms it made available to the commissioners for use at Baker's 2004  
 9 parole consideration hearing, and to provide the court with accurate copies of such forms and  
 10 documents. In addition, the court requested respondent to provide a copy of the proposed  
 11 decision and stated reasons for disapproval of Baker's 2004 hearing.

12 The amended/supplemental petition should be denied because it does not state a prima  
 13 facie case for relief because the Board did not lose jurisdiction to rehear Baker's parole  
 14 consideration hearing.

#### 15 SUPPLEMENTAL RETURN

16 Respondent Ben Curry, Acting Warden at the Correctional Training Facility, for a  
 17 supplemental return to the November 20, 2006 order to show cause, states:

18 1. Respondent denies that incorporating by reference an argument in his traverse  
 19 meets Baker's burden of specifying the facts upon which relief is sought. (*In re Gallego* (1998)  
 20 18 Cal.4th 825, 837-838, fn. 12 [finding that a habeas petitioner's incorporation by reference of  
 21 allegations set forth in other parts of the petition and the facts set forth in the exhibits did not  
 22 meet his burden of presenting specific allegations in support of his claim]); see also *People v.*  
 23 *Duvall* (1995) 9 Cal.4th 464, 474 [noting that a habeas petitioner has the burden to specify the  
 24 facts establishing grounds for his release]; *Board of Prison Terms v. Superior Court (Ngo)*  
 25 (2005) 130 Cal.App.4th 1212, 1237 ["Only those claims raised in the original habeas petition or  
 26 in a supplemental habeas petition may be considered by the court."]; cf. *In re Rosenkrantz* (2002)  
 27 29 Cal.4th 616, 675 [noting that exhibits to habeas pleadings that are incorporated by reference  
 28 are not evidence, but merely supplement the allegations, and are subject to admissibility at an

1 evidentiary hearing based on the rules of evidence]; but cf. *In re Gay* (1998) 19 Cal.4th 771, 781,  
 2 fn. 7 [addressing the allegations in the petitioner's traverse that he had incorporated by reference  
 3 from his petition and informal reply].) Alternatively, respondent denies that Baker states a prima  
 4 facie case for relief in his amended/supplemental petition. (*People v. Duvall, supra*, 9 Cal.4th at  
 5 p. 474.)

6         2. Respondent denies that the Board "lost jurisdiction" to preside over Baker's  
 7 rehearing under the alleged time limits of sections 2041, 2042, 2044, and 2451 of title 15 of the  
 8 California Code of Regulations, and Penal Code section 3041, subsection (b). The Board's  
 9 September 24, 2004 decision did not become final for 120 days, namely, until January 22, 2005.  
 10 (Cal. Code Regs., tit. 15, § 2041, subd. (h); Pen. Code, § 3041, subd. (b).) The sixty-day limit of  
 11 section 2044 of the regulations does not apply to this case because a hearing panel member did  
 12 not request that the en banc Board consider this case. (Cal. Code Regs., tit. 15, § 2044, subd.  
 13 (a).) Rather, the decision to hold a rehearing was the result of the normal decision review  
 14 process. (Return, Exs. 3-4.) Further, section 2042 of the regulations does not provide a time  
 15 limit during which the Board must act. Section 2451 of the regulations also does not provide a  
 16 time limit and is not relevant because it addresses rescission hearings, which Baker's was not.

17         3. Respondent denies that section 2041, subdivision (d) of the regulations applies to  
 18 any issue raised in Baker's petition. Further, respondent denies that any regulatory language used  
 19 by respondent in his return was not applicable at the time of Baker's hearing. (Cal. Code Regs.,  
 20 tit. 15, §§ 2041-2042, History.) Moreover, respondent denies that the bases for disapproving a  
 21 decision are limited to those delineated in section 2042 of the regulations.

22         4. Respondent denies that Baker requested any relief in his amended/supplemental  
 23 petition. Alternatively, respondent denies that Baker is entitled to be released from prison. If the  
 24 court decides to grant Baker habeas relief, the remedy is limited to a new parole consideration  
 25 hearing before the Board that comports with due process. (See *In re Rosenkrantz, supra*, 29  
 26 Cal.4th at p. 658 [noting that the proper remedy for a Board decision lacking some evidence is a  
 27 new hearing comporting with due process]; *In re Carr* (1995) 38 Cal.App.4th 209, 218 [finding  
 28 that the appropriate relief for a due process violation is to provide the process due].)

1           5.       Respondent denies that Baker's due process rights were violated at his September  
2 24, 2004 hearing. Respondent also denies that some evidence did not support the Board's  
3 October 4, 2005 decision denying Baker parole.

4           6.       Respondent denies that the court ordered respondent to show cause based on  
5 Baker's claim of cruel and unusual punishment. Alternatively, respondent denies that Baker has  
6 stated specific facts to meet his burden of stating a prima facie case for relief on this claim.  
7 (*People v. Duvall, supra*, 9 Cal.4th at p. 474.) Finally, respondent denies that Baker has been  
8 incarcerated in gross excess of the established guidelines for his offense and that his continued  
9 incarceration constitutes excessive confinement in violation of the California Constitution. The  
10 the sentencing matrix is not relevant, and the Board need not consider it, until the prisoner is  
11 found suitable for parole. (*In re Dannenberg, supra*, 34 Cal.4th at p. 1098.)

12           7.       Respondent denies that inmate Fikes's declaration properly authenticates the  
13 documents attached to it as exhibits. Fikes's declaration merely identifies the documents, and  
14 does not explain where the documents came from, that they are true and accurate copies, and how  
15 he knows they are true and accurate copies. (See Evid. Code, § 1400.)

16           8.       Respondent alleges that it would be impossible to recreate the September 24, 2004  
17 Board decision granting parole based on existing documents. (See Levorse Decl; Maciel Decl.)

18           9.       Baker was scheduled for a subsequent parole consideration hearing on December  
19 19, 2006, but it was postponed at Baker's request because of his pending habeas petition.

20           10.      Except as expressly admitted, respondent denies each and every allegation of the  
21 amended/supplemental petition.

22           This supplemental return is based on the allegations and authorities above, respondent's  
23 informal response, respondent's original return filed on November 28, 2005, respondent's  
24 October 5, 2005 letter to the court, respondent's opposition to petitioner's request for judicial

25 ////

26 ////

27 ////

28 ////

1 notice, and respondent's objection to the traverse, all of which are incorporated by reference.

2 WHEREFORE, respondent respectfully requests that the petition for writ of habeas  
3 corpus be denied and the orders to show cause be discharged.

4 Dated: January 31, 2007

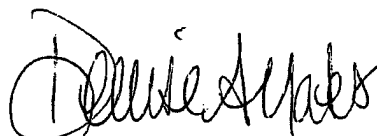
Respectfully submitted,

5 BILL LOCKYER  
6 Attorney General of the State of California

7 JAMES M. HUMES  
8 Chief Assistant Attorney General

9 FRANCES T. GRUNDER  
10 Senior Assistant Attorney General

11 ANYA M. BINSACCA  
12 Supervising Deputy Attorney General

13 

14 DENISE A. YATES  
15 Deputy Attorney General

16 Attorneys for Respondent Ben Curry, Acting  
17 Warden at the Correctional Training Facility



**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **In re FRED L. BAKER**

No.: **HC04990**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **February 1, 2007**, I served the attached

**RESPONDENT'S RETURN TO THE AMENDED/SUPPLEMENTAL PETITION**

**DECLARATION OF SANDRA MACIEL IN SUPPORT OF  
RESPONDENT'S SUPPLEMENTAL RETURN**

**DECLARATION OF DEBRA LEVORSE IN SUPPORT OF  
RESPONDENT'S SUPPLEMENTAL RETURN**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Michael Herro**  
**Attorney at Law**  
**Herro Law Offices**  
**134 Central Avenue**  
**Salinas, CA 93901**  
attorney for Fred L. Baker  
C-22918

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **February 1, 2007**, at San Francisco, California.

\_\_\_\_\_  
J. Tucay  
Declarant

\_\_\_\_\_  
*J. Tucay*  
Signature



ORIGINAL

FILED

FEB 07 2007

LISA M. GALDOS  
CLERK OF THE SUPERIOR COURT  
*S. Garside* DEPUTY

S. GARSIDE

1 EDMUND G. BROWN JR.  
Attorney General of the State of California  
2 MARY JO GRAVES  
Chief Assistant Attorney General  
3 JULIE L. GARLAND  
Senior Assistant Attorney General  
4 ANYA M. BINSACCA  
Supervising Deputy Attorney General  
5 DENISE A. YATES, State Bar No. 191073  
Deputy Attorney General  
6 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
7 Telephone: (415) 703-5531  
Fax: (415) 703-5843  
8 Attorneys for Respondent Ben Curry, Acting Warden  
at the Correctional Training Facility  
9 SF2005200086

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF MONTEREY

12 SALINAS DIVISION

13  
14 In re

15 **FRED L. BAKER,**

16 Petitioner,

17 **On Habeas Corpus.**

No. HC 4990

**DECLARATION OF SANDRA  
MACIEL IN SUPPORT OF  
RESPONDENT'S SUPPLEMENTAL  
RETURN**

18 Judge: The Honorable Marla O.  
19 Anderson

20 I, Sandra Maciel, declare:

21 1. I have been employed by the California Department of Corrections and  
22 Rehabilitation as a Staff Services Manager I for the Board of Parole Hearings in the Decision  
23 Processing and Scheduling Unit (DPU/SCH) since May 2001. In this capacity, I supervise staff  
24 who perform various duties regarding the parole consideration hearing process, including  
25 managing lifer packets that the records department of various prisons forwards to the Board after  
26 a parole hearing. If sworn as a witness, I would be competent to testify to the facts contained  
27 herein because they are within my personal knowledge.

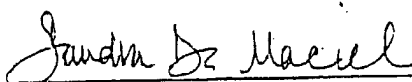
28 2. After a parole consideration hearing, the DPU/SCH receives from the institution's

1 records department the lifer packet, the tape(s) of the hearing, and the forms filled out by the  
2 Board panel at the hearing. The DPU/SCH retains the lifer packet, the tape(s), and the completed  
3 forms for one year after the hearing was conducted. In the thirteenth month, the DPU/SCH  
4 purges the tapes and documents. That is, after an official transcript is prepared, the  
5 corresponding hearing tape(s) are destroyed. In addition, the documents in the lifer packet  
6 duplicative of those in the prisoner's central file are shredded, and some of the forms completed  
7 by the Board panel at the hearing, including the hearing transcript, are saved electronically.  
8 DPU/SCH staff are instructed to save the forms listed in exhibit one to this declaration if the  
9 DPU/SCH received them.

10 3. If a BPT 1000(b) Grant Worksheet was completed during a parole hearing, it is  
11 normally destroyed and thus, is not forwarded to the DPU/SCH. If a BPT 1000(b) Grant  
12 Worksheet was forwarded to the DPU/SCH, the DPU/SCH staff are instructed to electronically  
13 scan the form. A BPT 1000(b) Grant Worksheet for Baker's 2004 parole consideration hearing  
14 was not located and therefore, was presumably destroyed in the normal course of business or was  
15 never completed.

16 4. The Board does not prepare a separate decision suggested by the language at the  
17 bottom of the BPT 1005 form: "If the proposed decision denying or granting parole is  
18 disapproved, you will receive a copy of the proposed decision and the reasons for disapproval."  
19 Rather, at the hearing, the prisoner is informed of the reasons for the decision, which are then  
20 reflected in the decision portion of the hearing transcript, and he is provided a copy of the BPT  
21 1005 form. And after it is transcribed, a copy of the hearing transcript is forwarded to the  
22 prisoner.

23 I declare under penalty of perjury that the foregoing is true and correct and that this  
24 declaration was executed on January 31, 2007, at Sacramento, California.

25  
26 

27 Sandra Maciel  
28 Staff Services Manager I  
Decision Processing and Scheduling Unit

ORIGINAL

FILED

FEB 07 2007

LISA M. GALDOS  
CLERK OF THE SUPERIOR COURT  
*S. Garside* DEPUTY  
S. GARSIDE

EDMUND G. BROWN JR.  
Attorney General of the State of California  
MARY JO GRAVES  
Chief Assistant Attorney General  
JULIE L. GARLAND  
Senior Assistant Attorney General  
ANYA M. BINSACCA  
Supervising Deputy Attorney General  
DENISE A. YATES, State Bar No. 191073  
Deputy Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 703-5531  
Fax: (415) 703-5843  
Attorneys for Respondent Ben Curry, Acting Warden  
at the Correctional Training Facility  
SF2005200086

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

SALINAS DIVISION

In re

**FRED L. BAKER,**

Petitioner,

**On Habeas Corpus.**

No. HC 4990

**DECLARATION OF DEBRA  
LEVORSE IN SUPPORT OF  
RESPONDENT'S SUPPLEMENTAL  
RETURN**

Judge: The Honorable Marla O.  
Anderson

I, Debra Levorse, declare:

1. I have been employed by the California Department of Corrections and Rehabilitation at the Correctional Training Facility (CTF) since approximately June 15, 1981. I am a Correctional Counselor III and have been employed as the Classification and Parole Representative in the records department at CTF since approximately July 2, 2001. In this capacity, I supervise staff ("CTF staff") who perform various duties regarding the parole consideration hearing process, including preparing certain documents that are presented to the Board before parole consideration hearings. In addition, I am the liaison between the Board of Parole Hearings and CTF. If sworn as a witness, I would be competent to testify to the facts

1 contained herein because they are within my personal knowledge.

2           2. I understand that the court has ordered case records staff to ascertain which forms  
3 were made available to the Board commissioners for use at prisoner Fred Baker's (C-22918)  
4 September 24, 2004 parole consideration hearing and to provide accurate copies of these forms  
5 and documents.

6           3. Before a parole consideration hearing, CTF staff forwards certain blank Board  
7 forms to the Board for use at the parole consideration hearing, as well as a packet of documents  
8 (lifer packet), which is also sent to the prisoner's attorney and the district attorney before the  
9 hearing. CTF staff forwards to the Board the following Board forms:

10           BPT 1000 Life Prisoner Parole Consideration Worksheet

11           BPT 1001 Life Prisoner Hearing Decision Face Sheet

12           BPT 1001A Life Prisoner Hearing - Extraordinary Action and Decision

13           BPT 1008 Life Prisoner Parole Consideration Hearing Checklist

14 The lifer packet consists of the documents in the prisoner's central file that correspond with the  
15 documents listed in the BPT 1008 form.

16           4. I do not know if CTF staff forwarded every single document listed above to the  
17 Board before Baker's 2004 parole consideration hearing, but CTF staff should have forwarded  
18 them in the normal course of business. Included with this declaration as exhibits 1-4,  
19 respectively, is a copy of the blank BPT forms listed above, namely, BPT 1000, BPT 1001, BPT  
20 1000A, and BPT 1008.

21           5. In addition to the Board forms sent by CTF staff to the Board, miscellaneous  
22 forms are available to the Board in the hearing room at CTF. Examples of the forms currently  
23 available in the CTF hearing room are included in exhibit 5 to this declaration; these forms may  
24 or may not apply to parole consideration hearings. I do not know what forms were available in

25 ///

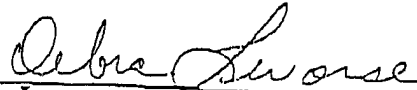
26 ///

27 ///

28 ///

1 the CTF hearing room at Baker's September 24, 2004 parole consideration hearing.

2 I declare under penalty of perjury that the foregoing is true and correct and that this  
3 declaration was executed on January 10, 2007, at Soledad, California.

4  
5 

6 Debra Levorse  
7 Classification and Parole Representative  
8 Records Department, Correctional Training Facility  
9  
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28

**EXHIBIT “U”**

2 MICHAEL A. HERRO, Attorney at Law (233749)  
3 111 West Alisal Street  
4 Salinas, California 93901  
5 Telephone: (831) 755-5058

6 Attorney for Petitioner Fred L. Baker

7 **SUPERIOR COURT OF MONTEREY COUNTY**

8 **STATE OF CALIFORNIA**

9 **SALINAS DIVISION**

10 **IN RE**

11 **FRED L. BAKER**

12 **Petitioner**

13 **On Habeas Corpus**

) **CASE NO.: HC 4990**

) **(PROPOSED) ORDER**

) **GRANTING EXTENSION OF**  
) **TIME**

14  
15  
16  
17 The Court, having considered Petitioner's request for an extension of time to file a Traverse in  
18 this matter, and good cause appearing,

19 IT IS HEREBY ORDERED that Petitioner's request for an extension of time to file a Traverse is  
20 **GRANTED**, and Petitioner shall have until March 30, 2007 to file the Traverse.

21 Dated: 3-14-07

22  
23  
24  
25 **JONATHAN R. PRICE**

**FILED**

**MAR 14 2007**

**LISA M. GALDOS**  
**CLERK OF THE SUPERIOR COURT**  
**DEPUTY**

**S. GARSIDE**

**PROOF OF SERVICE**

1 STATE OF CALIFORNIA )  
2 ) §  
3 COUNTY OF MONTEREY )

4 I, the undersigned, do hereby declare:

5 I am employed in the County of Monterey, California. I am over the age of eighteen  
6 (18) years; a citizen of the United States; and not a party to the within action. My business  
7 address is: 111 West Alisal Street, Salinas, CA 93901.

8 On this date, Wednesday, March 14, 2007, I served the attached **PETITIONER'S**  
9 **REQUEST FOR EXTENSION OF TIME TO FILE** in case number **HC 4990**; in the  
10 matter of **FRED BAKER** on the interested parties in said cause, as designated below:

11 \_\_\_\_\_ (By US. Postal Service) By placing on that date at my place of business, a  
12 true copy thereof, enclosed in a sealed envelope with postage fully prepaid,  
13 for collection and mailing with the United States Postal Service where it  
14 would be deposited with the United States Postal Service that same day in  
15 the ordinary course of business.

16 \_\_\_\_\_ (By personal service) I caused the document(s) to be personally delivered by  
17 hand to the office(s) of the addressee(s).

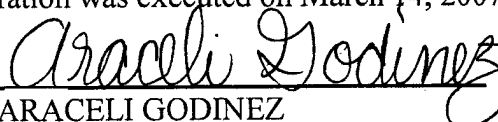
18 **X** \_\_\_\_\_ (By U.S. Postal Express Mail) I caused a sealed envelope, with Express  
19 Mail postage thereon fully prepaid, to be placed in the United States Mail  
20 depository, at Salinas, California, for next day delivery.

21 \_\_\_\_\_ (By Fax Machine) I caused a true copy of the above referenced  
22 document(s) to be transmitted by facsimile machine to the phone number  
23 shown below each address, and caused a sealed envelope containing a true  
24 copy of the same, with first class postage thereon fully prepaid, to be  
25 deposited in the United States mail in Salinas, California.

26 Said document(s) is/are addressed as follows:

27 **The Office of the Attorney General**  
28 **Attention: Deputy Attorney Denise A. Yates**  
**455 Golden Gate Ave. Suite 11000**  
**San Francisco, CA 94102-7004**

29 I declare under penalty of perjury under the laws of the State of California that the  
30 foregoing is true and correct, and that this declaration was executed on March 14, 2007, at  
31 Salinas, California.

32   
33 ARACELI GODINEZ  
34 SECRETARY ASSISTANT III



**EXHIBIT “V”**

**FILED**

APR 24 2007

## SUPERIOR COURT OF CALIFORNIA

## COUNTY OF MONTEREY

LISA M. GARDOS  
CLERK OF THE SUPERIOR COURT  
DEPUTY~~OSCAR LUNA~~

In re

Fred L. Baker

On Habeas Corpus.

Case No.: HC 4990

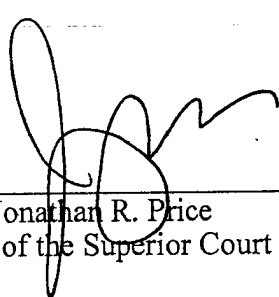
ORDER

Given the complexity of the issues raised and the need for a thorough examination of the file, the high number of habeas corpus petitions filed in the recent past, and staffing issues, the court requires additional time to review this matter before rendering a decision.

Good cause appearing, pursuant to California Rules of Court, Rule 4.551(h), the court, on its own motion, extends the time in which it is to issue an order to and including June 1, 2007.

IT IS SO ORDERED.

Dated: 4-24-07

  
\_\_\_\_\_  
Hon. Jonathan R. Price  
Judge of the Superior Court

**CERTIFICATE OF MAILING**

**C.C.P. SEC. 1013a**

I do hereby certify that I am not a party to the within stated cause and that on April 24, 2007 I deposited true and correct copies of the following document: ORDER in sealed envelopes with postage thereon fully prepaid, in the mail at Salinas, California, directed to each of the following named persons at their respective addresses as hereinafter set forth:

Michael Herro, Attorney at Law  
111 W Alisal St  
Salinas, CA 93901

Denise A Yates, Deputy Attorney General  
California Attorney General's Office  
455 Golden Gate Ave, Ste 11000  
San Francisco, CA 94102

Dated: \_\_\_\_\_

LISA M. GALDOS,  
Clerk of the Court

By: \_\_\_\_\_  
Deputy

**EXHIBIT “W”**

**FILED**

SUPERIOR COURT OF CALIFORNIA

JUN 01 2007

COUNTY OF MONTEREY

LISA M. GALDOS  
CLERK OF THE SUPERIOR COURT  
DEPUTY

In re

Fred L. Baker

On Habeas Corpus.

) Case No.: HC 4990

S. GARSIDE

) ORDER

The background of the petition is as follows.

Petitioner is currently incarcerated at the Correctional Training Facility (CTF) in Soledad.

On September 24, 2004, the Board of Prison Terms (now Board of Parole Hearings) hearing panel found Petitioner suitable for parole.

On November 30, 2004, the Decision Review Unit recommended that the September 24, 2004 hearing be disapproved and that a rehearing be conducted on the next available calendar.

The then-chief counsel of the Board, Terry Farmer, endorsed the Decision Review Unit's recommendation. On December 14, 2004, the en banc Board voted to disapprove the proposed decision of September 24, 2004 to grant parole and to schedule a rehearing of the Petitioner's subsequent parole consideration hearing on the next available calendar.

On January 27, 2005, Petitioner filed a petition for writ of habeas corpus, claiming that the Board violated his due process rights when the Board ordered that his September 24, 2004 parole suitability hearing be reheard because the hearing could not be entirely transcribed.

On March 25, 2005, the court requested an informal response from the Attorney General's Office (Respondent). The court ordered that Petitioner may file a reply.

On July 28, 2005, Respondent filed an informal response.

On August 10, 2005, Petitioner filed a reply.

On August 23, 2005, the court issued an Order to Show Cause.

1 On October 4, 2005, a panel consisting of the same members who granted Petitioner  
2 parole on September 24, 2004 conducted the rehearing. Petitioner waived his appearance at the  
3 rehearing, but his counsel was present. Petitioner was denied parole for one year.

4 On October 7, 2005, Respondent filed a letter with the court, advising the court that  
5 Petitioner's subsequent parole suitability hearing was held on October 4, 2005 and that the panel  
6 denied Petitioner parole for one year.

7 On October 24, 2005, the court denied Respondent's request that the court modify its  
8 Order to Show Cause. The court ordered Respondent to file a return on or before November 25,  
9 2005. The court further ordered that Petitioner may file a denial on or before December 16,  
10 2005.

11 On November 28, 2005, Respondent filed a return. On December 23, 2005, Petitioner  
12 filed a denial.

13 Subsequently, Petitioner filed a motion to amend the denial and a request for judicial  
14 notice and Respondent filed an opposition and objection.

15 On March 8, 2006, Petitioner filed a response to Respondent's opposition to request for  
16 judicial notice and a response to Respondent's objection.

17 On June 5, 2006, the court found that the petition contained pleading defects which must  
18 be corrected. The court granted Petitioner leave to amend or supplement his petition by  
19 addressing facts and theories relevant to the Board's decision which were not expressly or  
20 implicitly raised in the petition.

21 On July 10, 2006, Petitioner filed an amended/supplemental petition.

22 On August 5, 2006, Respondent filed a request for clarification and, if appropriate, the  
23 issuance of an order to show cause.

24 On November 20, 2006, the court issued an order to show cause.  
25

1       Petitioner's subsequent parole consideration hearing was scheduled for December 19,  
2 2006, but it was postponed at Petitioner's request because of the instant petition.

3       Respondent was granted an extension of time to file a supplemental return by January 8,  
4 2007. Subsequently, the court, on its own motion, granted Respondent an extension of time to  
5 file a supplemental return within 30 days from January 5, 2007.

6       On February 1, 2007, the court denied Petitioner's "Motion to Grant Relief Requested in  
7 Petition for Writ of Habeas Corpus."

8       On February 7, 2007, Respondent filed a return to the amended/supplemental petition.

9       Thereafter, Petitioner was granted an extension of time to file a supplemental denial on or  
10 before March 30, 2007. On March 29, 2007, Petitioner filed a supplemental denial.

11       The court has reviewed all documents filed in this case.

12       The court finds that the Board did not lose jurisdiction to preside over Petitioner's  
13 rehearing under the time limits of sections 2041, 2042, 2044 and 2451 of title 15 of the  
14 California Code of Regulations and Penal Code section 3041(b). The Decision Review Unit  
15 found that the September 24, 2004 hearing was not in accordance with the law because a  
16 significant portion of the transcript was unable to be transcribed. In order to comply with the  
17 law, the Decision Review Unit recommended that the September 24, 2004 decision be  
18 disapproved and a rehearing be scheduled. (See Cal. Code Regs., tit. 15, §2042 [including that  
19 *an error of law* is a basis for disapproving a decision].) On November 30, 2004, Daniel Moeller  
20 signed the recommendation on behalf of the Decision Review Unit, and the then-chief counsel of  
21 the Board, Terry Farmer, endorsed the Decision Review Unit's recommendation on the same  
22 day. On December 14, 2004, the en banc Board considered the findings of the Decision Review  
23 Unit and ordered that the panel decision be disapproved and a rehearing be scheduled. Thus, the  
24 panel's September 24, 2004 decision did not become final on January 22, 2005. (Pen. Code,  
25 §3041(b).) The sixty-day limit of section 2044 of the regulations does not apply to this case

1 because a hearing panel member did not request that the en banc Board consider this case. (Cal.  
2 Code Regs., tit. 15, §2044(a).) The decision to hold a rehearing was the result of the normal  
3 decision review process. (Return, Exhibits 3-4.) Section 2042 of the regulations does not  
4 provide a time limit during which the Board must act. Section 2451 of the regulations also does  
5 not provide a time limit and is not relevant because it addresses rescission hearings.

6 The court notes that Petitioner is not responsible for his September 24, 2004 parole  
7 suitability hearing being transcribed in part only.

8 Nevertheless, the court finds that Petitioner's 2004 parole suitability hearing record is  
9 insufficient. The hearing transcript is incomplete and *written documents* relating to the hearing  
10 are insufficient. It would be inappropriate to order the panel to recreate their decision  
11 recommending parole based on the incomplete transcript, insufficient written documents and  
12 their independent recollection. The transcript of the 2004 hearing did not contain the statements  
13 by the victim and the panel's findings and reasoning for granting Petitioner parole. In addition,  
14 Petitioner and/or his attorney, as well as the deputy district attorney, likely gave a closing  
15 statement that was not included in the transcript. The Board could not effectively fulfill the  
16 statutory requirement that the hearing transcripts be made available to the public and be subject  
17 to different levels of review with such an incomplete transcript. Aside from the incomplete  
18 transcript, the only existing written documents relating to Petitioner's 2004 parole suitability  
19 hearing are BPT1001 (Life Prisoner Hearing Decision Face Sheet), The Board's Miscellaneous  
20 Decision dated December 20, 2004, BPT 1000 (Life Prisoner Consideration Worksheet) and  
21 BPT1005 (Life Prisoner: Parole Consideration Proposed Decision). Respondent has shown that  
22 it would be impossible to recreate the September 24, 2004 panel decision granting parole based  
23 on the incomplete transcript and other *existing* documents (See Declarations of Debra Levorse  
24 and Sandra Maciel). Regardless of whatever consultation the Board may have had with the  
25 commissioners, having the panel members recreate the decision granting parole based on the



1 incomplete transcript, other existing documents and their independent recollection would not  
2 cure the fact that the entire transcript was not recorded as required by law.

3 The court notes that in another inmate (Inmate Freddy Fikes)'s case the panel's decision  
4 was recreated based on the decision work sheet that was fortuitously retained and reflected the  
5 panel's reasoning. However, the instant case is distinguishable from Freddy Fikes' case. Fikes'  
6 parole suitability hearing was held *in 1992*, the documents relating to Fikes' parole suitability  
7 hearing do not reveal what part of Fikes' hearing was unable to be transcribed, and the errata  
8 sheet was an available alternative because the *decision worksheet containing the decision and*  
9 *reasoning for the decision was retained*. In Petitioner's case, his parole suitability hearing took  
10 place in 2004, no decision worksheet containing the decision and reasoning for the decision was  
11 retained, and the significant portion of the hearing was unable to be transcribed.

12 Petitioner's due process rights were not violated when the Board ordered that his parole  
13 suitability hearing be reheard. The law requires that the entire hearing be recorded and  
14 transcribed. The victim, the district attorney, and the defendant must have an opportunity to  
15 voice their opinions. See Pen. Code, §§3043(b), 3042(a), 3041.5(a)(2). The transcript must be  
16 available to the public (Pen. Code, §3042(b)), and it must include the findings and reasons  
17 supporting the decision (Pen. Code, §3042(c)). The Board (Pen. Code, §3041(b)) and the  
18 Governor (Pen. Code, 3041.1) must be able to competently review the panel's decision. The  
19 hearing transcript omitted any further questions by the deputy district attorney, the panel, or  
20 Petitioner's counsel. As also discussed above, the transcript did not contain the statements by  
21 the victim and the panel's findings and reasoning for granting Petitioner parole. During its  
22 mandatory review, Daniel Moeller of the Decision Review Unit recommended that because the  
23 transcript was incomplete, the Board should disapprove the September 24, 2004 decision  
24 granting parole and schedule a rehearing. Terry Farmer, the then-chief counsel of the Board,  
25 endorsed the Decision Review Unit's recommendation. A new hearing is appropriate if there

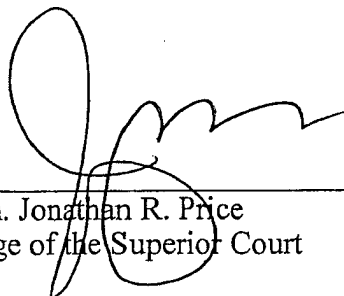
1 was an error of law or fact, or based on new information. Cal. Code Regs., tit. 15, §2042. If the  
2 chief counsel recommends that a new hearing should be held, a new hearing will not be ordered  
3 unless a majority of the Board sitting en banc votes to do so. Pen. Code, §3041(b). The Board  
4 sitting en banc considered the *findings and recommendation* of the Decision Review Unit, and  
5 voted to disapprove the September 24, 2004 proposed decision and schedule a rehearing.  
6 Moreover, the panel's parole grant was a preliminary decision subject to review by the Board  
7 and the Governor, and Petitioner did not have a due process liberty interest in a preliminary  
8 decision. The panel notified Petitioner on multiple documents that its decision was a proposed  
9 decision, it was not final, and it would be reviewed.

10 The tentative decision granting parole was reviewed and *a rehearing was held*. Upon  
11 further review, the same panel concluded that public safety concerns required finding Petitioner  
12 unsuitable for parole.

13 In light of the foregoing, the petition is denied.

14 IT IS SO ORDERED.

15 Dated: 6-1-07

16  
17   
18 \_\_\_\_\_  
19 Hon. Jonathan R. Price  
20 Judge of the Superior Court  
21  
22  
23  
24  
25

**CERTIFICATE OF MAILING**

**C.C.P. SEC. 1013a**

I do hereby certify that I am not a party to the within stated cause and that on

JUN 01 2007 I deposited true and correct copies of the following document:

ORDER in sealed envelopes with postage thereon fully prepaid, in the mail at Salinas, California, directed to each of the following named persons at their respective addresses as hereinafter set forth:

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Salinas, CA 93901

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Office of the Attorney General  
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San Francisco, CA 94102-7004

Dated: JUN 01 2007

LISA M. GALDOS,  
Clerk of the Court

By: 

Deputy

S. GARSIDE